

SENATE BILL 844

By Briggs

AN ACT to amend Tennessee Code Annotated, Section 40-1-111, relative to domestic abuse magistrates in counties having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300) according to the 2010 federal census or any subsequent federal census.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, 40-1-111, is amended by adding the following as a new subsection:

(h)

(1) In any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census, there is created the position of domestic abuse magistrate.

(2) Notwithstanding any other law to the contrary, the domestic abuse magistrate created by this subsection (h) shall be appointed by the judge of the fourth circuit court of any such county and shall hold office for a term of eight (8) years from the date of appointment. The magistrate shall be eligible for reappointment to successive eight-year terms and shall be compensated from the general fund of the county in an amount to be determined by the county legislative body. Upon making a selection, the judge shall reduce the appointment to writing and file it with the fourth circuit court clerk of any county to which this subsection (h) applies. The domestic abuse magistrate, once

appointed, shall regularly perform the duties set out in this subsection (h) within the approximate time period that the fourth circuit court begins and ends its daily docket, and the magistrate shall be styled as magistrate judge.

(3) To qualify for the position of domestic abuse magistrate, the applicant must:

(A) Be at least thirty (30) years of age;

(B) Be a resident of the county funding the position;

(C) Be an attorney, licensed to practice law in the courts of the state of Tennessee; and

(D) Have served as a judicial commissioner or magistrate pursuant to subsection (a) for at least a full four-year term prior to application.

(4)

(A) No person who is a judicial commissioner under subsection (a) or a magistrate under subsection (g) prior to the appointment of the domestic abuse magistrate may simultaneously hold that position and the position of domestic abuse magistrate under this subsection (h).

(B) If a deputy court clerk is appointed as the domestic abuse magistrate under subdivision (h)(2), then the magistrate shall be compensated as the domestic abuse magistrate from the general fund of any county to which this subsection (h) applies in an amount not less than the salary previously received as deputy court clerk.

(5) For purposes of:

(A) Title 36, chapter 3, part 6, the domestic abuse magistrate shall be considered a "court" as defined in § 36-3-601(3)(A) and (D) and shall have all jurisdiction and authority necessary to serve in that function for the employing county; and

(B) Title 40, chapter 5, part 1, the domestic abuse magistrate shall be considered a "magistrate" as defined in § 40-5-102, and shall have all of the jurisdiction and authority necessary to serve in that function for the employing county, and the domestic abuse magistrate shall complete the judicial continuing education requirements of subsection (f) in the same manner as a judicial commissioner.

(6) The domestic abuse magistrate shall have, regardless of whether the case involves alleged domestic abuse, the following duties pursuant to this chapter, the rules of civil procedure, the rules of criminal procedure, and applicable statutes:

(A) Those conferred upon a court by title 36, chapter 3, part 6;

(B) Issuing or denying temporary or ex-parte orders of protection;

(C) Setting and approving bond in cases of civil and criminal contempt for alleged violations of orders of protection;

(D) Issuing injunctions and other appropriate orders in cases of alleged domestic violence;

(E) Setting and approving of bonds and release on recognizance of defendants in accordance with applicable law;

(F) Issuing mittimus in compliance with § 40-5-103;

(G) Issuing criminal arrest warrants, criminal summons, and search warrants upon a finding of probable cause;

(H) Appointing attorneys for indigent defendants and respondents in accordance with applicable law;

(I) Conducting initial appearances in accordance with Rule 5 of the Tennessee Rules of Criminal Procedure;

(J) Setting and approving bond for probation violation warrants;

(K) Issuing attachments, capias, or conditional bond forfeitures;

(L) Conducting compliance review dockets to examine and report to the appropriate judge any findings and conclusions regarding compliance with court orders;

(M) Conducting initial appearances for any defendant following arrest for a crime involving domestic abuse when conducted pursuant to the requirements imposed by § 36-3-602(c); and

(N) Any other judicial duty, not prohibited by the constitution, statute, or applicable rules, when requested by a judge.

(7) If the domestic abuse magistrate is carrying out one (1) of the duties of the office under this subsection (h), the failure to appear before the magistrate constitutes failure to appear and shall subject the defendant or respondent to arrest and forfeiture of bond.

(8) If the appointed domestic abuse magistrate is absent or unavailable for any reason, the magistrate has the authority to appoint special, substitute, or temporary magistrates to carry out the duties of this section. A substitute magistrate shall be an attorney, licensed to practice law in the courts of this state, a resident of the county of the appointing domestic violence magistrate, and not less than thirty (30) years of age. An order of appointment for a special, substitute, or temporary magistrate shall be for a fixed period of time and shall be reduced to writing and filed with the fourth circuit court clerk.

(9) The domestic abuse magistrate may also accept appointment:

(A) By the criminal court clerk to serve as deputy to the criminal court clerk. If the domestic abuse magistrate is appointed as deputy

clerk, but ceases to serve as deputy clerk prior to the end of the magistrate's term, the domestic abuse magistrate shall continue to serve as magistrate with duties and compensation unaffected and shall remain eligible for reappointment as domestic abuse magistrate; and

(B) By the judge of the fourth circuit court to serve as a special master to the fourth circuit court for any purpose established by the judge. The appointment may be made by the judge at the same time as the appointment to the position of domestic abuse magistrate, or at any time during the magistrate's term.

SECTION 2. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.